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SERVICE DATE – JULY 5, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN HUDSON
COUNTY, NJ

Docket No. AB 55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN
HUDSON COUNTY, NJ

Docket No. AB 290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

Decided: July 5, 2016

This proceeding involves a request to abandon an approximately 1.36-mile portion of a line of railroad, known as the Harsimus Branch, located in the City of Jersey City, N.J. Consolidated Rail Corporation (Conrail) filed a notice of exemption in this proceeding to abandon the Harsimus Branch (Harsimus Abandonment Proceeding)¹ following the Board's 2007 decision finding that the Harsimus Branch is a line of railroad subject to its abandonment authority. (City of Jersey City—Pet. for Declaratory Order, FD 34818, slip op. at 1 (STB served Dec. 19, 2007).) The Harsimus Abandonment Proceeding was held in abeyance while the related proceeding was being litigated in Federal court.² The Board lifted the abeyance order and reinstituted the Harsimus Abandonment Proceeding on August 11, 2014.

¹ Consol. Rail Corp.—Aban. Exemption—in Hudson Cty., N.J., AB 167 (Sub-No. 1189X); CSX Transp., Inc.—Discontinuance of Serv. Exemption—in Hudson Cty., N.J., AB 55 (Sub-No. 686X); Norfolk S. Ry.—Discontinuance of Serv. Exemption—in Hudson Cty., N.J., AB 290 (Sub-No. 306X) (STB served Mar. 18, 2009). Collectively, these three dockets are referred to as Harsimus Abandonment Proceeding.

² The courts ultimately agreed that the Harsimus Branch is a line of railroad. Consol. Rail Corp. v. STB, 571 F.3d 13, 19 (D.C. Cir. 2009) (sending case to district court for a determination of the status of the Harsimus Branch); City of Jersey City v. Consol. Rail Corp., 968 F. Supp. 2d 302 (D.D.C. 2013), aff'd, No. 13-7175 (D.C. Cir. Feb. 19, 2014) (Harsimus Branch was conveyed as a line of railroad in 1976).

In a decision served May 22, 2015, the Board addressed several discovery-related motions filed by the parties. (Harsimus Abandonment Proceeding, AB 167 (Sub-No. 1189X), et al. (STB served May 22, 2015) (May 2015 Decision).)³ The Board reminded the parties to “exercise sound judgment” in filing motions before the Board. (May 2015 Decision, slip op. at 8). Nonetheless, the parties have brought new discovery-related disputes to the Board for resolution.

The Board has signed a Memorandum of Understanding with the Federal Energy Regulatory Commission (FERC) to employ the services of FERC administrative law judges (ALJs) on a case-by-case basis to perform discrete, Board-assigned functions such as adjudicating discovery disputes between parties in cases pending before the Board. The Board hereby assigns and authorizes Administrative Law Judge John P. Dring to entertain and rule upon pending discovery matters and to resolve all future disputes concerning discovery in this proceeding. The parties are directed to send copies of all their pending and future discovery-related filings in this proceeding to Judge Dring at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426.

It is ordered:

1. This proceeding is assigned to Administrative Law Judge John P. Dring for handling of all discovery matters and initial resolution of all discovery disputes.
2. Each party in this proceeding must send a copy of its filings to Judge Dring at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426.
3. Judge Dring will be added to the service list in this proceeding, and a copy of this decision will be served upon him.
4. A copy of this decision will be served on the United States Office of Personnel Management (OPM), at Human Resources Solutions, ALJ Program Office, 1900 E Street NW, Room 2458, Washington, DC 20414-9400. Judge Dring shall send a copy of the notice or order that constitutes the final disposition of his assignment of this case to OPM at the above address.
5. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

³ The Board addressed further discovery disputes in decisions served November 2, 2015, and July 1, 2016.